



# Guidelines for making an application to the Councillor Conduct Tribunal under the *Local Government Act 2009*

## 1. Functions of the Independent Assessor

The functions of the Independent Assessor include –

- To investigate and deal with the conduct of councillors;
- To provide advice, training and information to councillors, local government employees and other persons about dealing with alleged or suspected inappropriate conduct, misconduct or corrupt conduct;
- To prosecute offences against the conduct provisions;
- To investigate other matters decided by the Minister; and
- Any other functions given to the Independent Assessor (“IA”) under the *Local Government Act 2009* (the Act).

## 2. Delegation of functions

The IA may delegate any of the assessor’s functions to an appropriately qualified staff member of the Office of the Independent Assessor (the OIA).

However, the IA may not delegate the assessor’s power to give a notice under section 150CK of the Act (Notice about confidentiality).

## 3. The decision to make an application to the Councillor Conduct Tribunal (CCT)

The decision to make an application to the CCT is made by the IA or the person to whom the IA delegates the functions relating to the making of an application under the Act.

Any decision by the IA to make an application to the CCT should be made with the following two concepts in mind:

- Given the evidence available, are there reasonable prospects of the application being sustained?
- Is it in the public interest to make the application?

### 3.1. Prospects of success

To determine the prospects of successfully sustaining the application, the IA (or delegate) should consider the following questions against the evidence obtained during their investigation:

- is there sufficient available evidence to prove misconduct by the subject councillor on the balance of probabilities?
- is the relevant evidence credible?
- are there any concerns with the credibility of the available witnesses?
- is any expert evidence required?
- what, if any, defences are open to the subject councillor?



## 3.2. Public interest considerations

The exercise of a disciplinary function by the IA will be guided by whether the exercise of that function will be in the public interest.

The IA (or delegate) may consider the following public interest considerations (this is a non-exhaustive list):

- the seriousness of the alleged misconduct.
- are there any mitigating or aggravating circumstances?
- the availability and effectiveness of any alternatives to making an application to the CCT.
- the subject councillor's history of compliance with their obligations under the Act, particularly the local government principles in section 4 of the Act.
- is the alleged breach a continuing or subsequent offence?
- how often, misconduct of this kind occurs and whether there is a need for deterrence.
- the length of time since the alleged misconduct occurred.
- the age and physical or mental health of the subject councillor.
- the length and expense of any misconduct hearing.
- if the alleged misconduct is sustained, what are the possible sanctions available.
- the need to maintain public confidence in the administration of justice by the OIA.
- can further proceedings be commenced against other persons as a result of the same incident.

## 4. Further considerations

### 4.1. Submissions on Sanction

The following is a non-exhaustive list of factors which may be considered by the OIA in preparing submissions on sanctions:

- The conduct of the subject councillor, including:
  - whether the misconduct was intentional or not.
  - whether the subject councillor attempted to conceal their misconduct, and how that was done – for example by collusion with other persons, intimidation of witnesses, destroying evidence.
  - any steps taken by the subject councillor to rectify or mitigate consequences of the misconduct and any contrition shown by the subject councillor.
  - the level of cooperation by the subject councillor with the OIA.
  - any prior misconduct findings made against the subject councillor relevant to the alleged offending.
  - any benefit or profit derived by the subject councillor due to the misconduct.
- The appropriate type of sanction to deter others from engaging in similar conduct.
- Any precedents or comparative cases.

### 4.2. Appeals

Although there is no specific restriction on whether the OIA may appeal against a finding made by the CCT, when considering whether to appeal against a finding, the OIA should have regard to the Model Litigant Principles. *(can insert link)*

An appeal should only be instituted where the OIA consider that the appeal is likely to succeed.

